

## EXHIBIT 1

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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USA COMMERCIAL MORTGAGE )  
COMPANY; USA CAPITAL REALTY )Case Nos.  
ADVISORS, LLC; USA CAPITAL )BK-S-06-10725 LBR  
DIVERSIFIED TRUST DEED FUND, )BK-S-06-10726 LBR  
LLC; USA CAPITAL FIRST TRUST )BK-S-06-10727 LBR  
DEED FUND, LLC; USA )BK-S-06-10728 LBR  
SECURITIES, LLC, )BK-S-06-10729 LBR  
  
Debtors.)

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November 7, 2007

9:58 a.m.

Rule 2004 Examination of DANIEL GERALD  
HAYES, held at the law offices of Moses & Singer  
LLP, The Chrysler Building, 405 Lexington Avenue,  
New York, New York, pursuant to subpoena, before  
Donald R. DePew, an RPR, CRR and Notary Public  
within and for the State of New York.

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2 A P P E A R A N C E S:

3

4 Attorneys for USA Commercial Mortgage

5 Liquidating Trust

6 DIAMOND McCARTHY LLP

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8 909 Fannin, Suite 1500

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10 BY: MICHAEL J. YODER, ESQ.

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12

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16 405 Lexington Avenue

17 New York, New York 10174-1299

18 BY: MARK N. PARRY, ESQ.

19 ERICA D. BUSCH, ESQ.

20

21 ALSO PRESENT:

22 MARGUERITE HOWELL, Videographer

23

24

25

1 Daniel Gerald Hayes

12:26:03 2 "HFAH-Asylum."

12:26:08 3 A. Uh-huh.

12:26:08 4 Q. You said earlier that was not a loan?

12:26:10 5 A. That's true.

12:26:13 6 MR. YODER: I'll ask the court reporter  
12:26:14 7 to mark this as Exhibit 5.

12:26:16 8 (Hayes Exhibit 5, Three-page document,  
12:26:16 9 bearing Bates stamp Nos. HFAH 001749 through  
12:26:16 10 HFAH 001751, marked for identification, as of  
12:26:16 11 this date.)

12:26:35 12 Q. Do you recognize the handwriting on the  
12:26:37 13 first page?

12:26:40 14 A. No.

12:26:44 15 Q. Does that resemble the handwriting of  
12:26:46 16 Joyce Timberlake?

12:26:49 17 A. I actually don't know her handwriting  
12:26:51 18 well enough.

12:26:53 19 Of the people who might have written  
12:26:54 20 it in my office, it would have either have been  
12:26:57 21 Joyce Timberlake or Jessica MacFarlane.

12:27:03 22 Q. Just take a moment to read the e-mail  
12:27:05 23 on the second page.

12:27:07 24 A. Okay.

12:27:08 25 (Witness looks at document.)

1 Daniel Gerald Hayes

12:27:26 2 A. Uh-huh.

12:27:27 3 Q. Do you see the first sentence, it says,

12:27:31 4 "Where HFAH Asylum LLC stands is it used USA

12:27:35 5 Capital funds to purchase the first and third

12:27:37 6 mortgages to perfect its lien rights in the

12:27:41 7 foreclosure or as a secured creditor in the

12:27:43 8 bankruptcy."

12:27:43 9 A. Uh-huh.

12:27:44 10 Q. Do you see that?

12:27:45 11 A. Yeah.

12:27:47 12 Q. And if you look down to the third

12:27:49 13 paragraph, the sentence that begins with "Since."

12:27:52 14 It says, "Since we have not repaid the

12:27:55 15 monies used to acquire that mortgage there is a

12:27:58 16 good chance that the beneficiary of that would be

12:27:59 17 the representatives of the providers of monies

12:28:01 18 through USA Capital."

12:28:05 19 A. Uh-huh.

12:28:05 20 Q. Earlier when you said that this

12:28:08 21 transaction was not a loan, was it not a loan

12:28:10 22 solely -- did you say it was not a loan solely

12:28:13 23 because there was no loan agreement executed?

12:28:15 24 A. No, I did not say that.

12:28:17 25 I -- because clearly I could have a

1 Daniel Gerald Hayes

12:28:19 2 loan without a loan agreement. I can give you \$10

12:28:21 3 and you and I could have an understanding that

12:28:23 4 you're going to pay it back to me.

12:28:25 5 Q. Why did you say it wasn't a loan then?

12:28:28 6 A. Because in this case \$10 was given to

12:28:32 7 you and you and I have made clear under what basis

12:28:37 8 you have the \$10. It's clear that you haven't

12:28:41 9 returned it. It's clear that whoever owns that

12:28:44 10 \$10 might want it back.

12:28:52 11 Q. Look back on the first page --

12:28:54 12 A. Uh-huh.

12:28:55 13 Q. -- where it says interest for

12:28:57 14 \$1,343,160.

12:29:01 15 A. Uh-huh.

12:29:01 16 Q. Do you see that?

12:29:02 17 A. Yeah.

12:29:03 18 Q. Do you see below that it says loan fees

12:29:05 19 for \$240,000?

12:29:07 20 A. Uh-huh.

12:29:08 21 Q. Do you know why Joyce Timberlake or

12:29:10 22 Jessica MacFarlane would have performed an

12:29:12 23 interest or loan fee calculation if there were no

12:29:16 24 loan?

12:29:17 25 A. Well, I --

1 Daniel Gerald Hayes

12:29:18 2 Which question are you asking, the

12:29:20 3 interest or the loan fees?

12:29:21 4 Q. Either one.

12:29:22 5 A. Okay. Interest, interest for the

12:29:28 6 monies that were advanced here was reported in our

12:29:32 7 accounting software, because whoever was directing

12:29:35 8 the accounting at the time that the advances were

12:29:39 9 made treated it as a loan and so they booked

12:29:45 10 interest.

12:29:45 11 Q. How do you think they arrived upon an

12:29:48 12 interest rate?

12:29:49 13 A. I don't know.

12:29:55 14 Q. If you'll turn back to the second page,

12:29:59 15 the last paragraph.

12:30:01 16 A. Yeah.

12:30:01 17 Q. "We have a tremendous and uncertain

12:30:03 18 exposure inasmuch as no loan was ever negotiated

12:30:07 19 or documented although funds were conveyed in

12:30:10 20 2004."

12:30:11 21 A. Uh-huh.

12:30:12 22 Q. What did you mean there when you wrote

12:30:13 23 tremendous and uncertain exposure?

12:30:16 24 A. Well, tremendous means what tremendous

12:30:20 25 means. It means large. The amount in controversy

1 Daniel Gerald Hayes

12:30:23 2 here is \$5 million. For me \$5 million is large.

12:30:29 3 Uncertain exposure means that clearly

12:30:34 4 if \$5 million was advanced -- and there is really

12:30:37 5 no doubt in my mind that the \$5 million was

12:30:40 6 advanced -- and it wasn't a gift, then it would be

12:30:47 7 nice to be able to characterize it. And writing

12:30:51 8 the e-mail as I apparently did in 2007, but

12:30:54 9 knowing that the circumstances happened in 2004,

12:30:57 10 it's very difficult to close out my financial

12:31:01 11 statements for the year when the parties didn't

12:31:04 12 take the trouble to characterize a \$5 million

12:31:08 13 transaction.

12:31:08 14 And at least on the books of Homes for

12:31:12 15 America Holdings \$5 million is also -- maybe

12:31:17 16 tremendous is not the right word, it's clearly

12:31:19 17 very, very material, it clearly would require a

12:31:22 18 note. And I just didn't need another note to the

12:31:24 19 financial statements that already had a lot of

12:31:26 20 notes.

12:31:26 21 Q. So how did you handle this issue on the  
12:31:29 22 financial statements?

12:31:30 23 A. Ultimately we did not obtain audited  
12:31:34 24 statements for the year.

12:31:40 25 Q. As a result of some of the



1 Daniel Gerald Hayes

12:31:42 2 documentation issues that you discussed earlier?

12:31:44 3 A. It was a result of -- audited

12:31:49 4 statements were essentially not required by any of

12:31:52 5 the instruments that Homes for America Holdings is

12:31:56 6 tied to. And since they're not required to be

12:32:00 7 delivered and since they, in fact, would once

12:32:05 8 prepared and delivered need to be produced, you

12:32:07 9 know, if someone asked for them. And since they

12:32:09 10 would actually make it very difficult for us to

12:32:11 11 represent our financial condition and would raise

12:32:13 12 more problems than I liked, we didn't continue

12:32:19 13 with them.

12:32:22 14 Q. When you say raise more problems than

12:32:24 15 you liked, what sorts of problems are you talking

12:32:27 16 about there?

12:32:28 17 A. Audited statements that have a

12:32:30 18 financial statement note that flags a \$5 million

12:32:35 19 uncharacterized transaction in the financial

12:32:38 20 statements indicates a problem with how you

12:32:40 21 conduct your business operations.

12:32:43 22 Q. What sorts of other flags were there or

12:32:47 23 is this the only one?

12:32:48 24 A. I don't recall at this time.

12:32:51 25 Q. You don't recall?